Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	WC Docket No. 02-89
Qwest Communications International Inc.	)	
Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)	)	

COMMENTS OF FOCAL COMMUNICATIONS CORPORATION AND PAC-WEST TELECOMM, INC. ON PETITION FOR DECLARATORY RULING OF QWEST COMMUNICATIONS INTERNATIONAL INC.

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Dated: May 29, 2002

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EXECUTIVE SUMMARY

Focal Communications Corporation ("Focal"), and Pac-West Telecomm, Inc. ("Pac-West") strongly oppose Qwest's Petition. Qwest objects to the filing process set up in Section 252(a)(1) of the Communications' Act ("the Act") and therefore seeks an "interpretation" of the law that would change the law. Although Qwest alleges that its Petition poses a limited but important question—the effects of its suggestions, if adopted, would be extremely far-reaching. Its proposal is designed to give Qwest greater control and leverage in the "negotiation" process between ILECs and CLECs, and to limit the ability of CLECs to "opt in" to agreements.

Qwest proposes a statutory interpretation that, if permitted, would limit the ability of regulators to quickly detect and remedy discriminatory ILEC conduct in the negotiation process. These changes would contribute to further devastation of the CLEC market. Qwest's proposal limits the opt-in process, reduces the role of states in reviewing agreements, ignores both the plain meaning of the statute and its legislative history.

When Congress permitted negotiated agreements, it coupled the negotiation process with a clear requirement for state filing. Section 252(e) plainly states that "any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission." This Commission's policy supports filing interconnection agreements with the states. In implementing the local competition provisions of the Act, the Commission concluded in the local competition order that the Act "does not exempt certain categories of agreements" from the state filing requirement. The Commission understands how the requirement to file agreements and make them public creates the procedural transparency necessary to assist telecommunications carriers seeking to opt-in to existing agreements, and has emphasized that requiring public filing of agreements enable carriers to have information about rates, terms, and conditions that an incumbent LEC makes available to others." Therefore, Qwest's effort to carve

out a new "interpretation" seeks untimely reconsideration and reversal of the policy decisions already made by this Commission.

Although Qwest gives lip service to its customers by suggesting that it is seeking procedural changes to expedite service implementation, it does not mention any examples of its CLEC customers clamoring for the changes it suggests. The primary way carriers have been able to achieve interconnection agreements is through the "opt-in" process provided for in Section 252(i). This process will be eviscerated if Qwest can carve out all non-price provisions of its interconnection agreements before it files the agreements with the states.

Qwest also is dismissive of the "pick and choose" process which gives CLECs flexibility to assemble more reasonable interconnection agreements. Qwest audaciously proposes that Congress meant all along to limit "pick and choose" possibilities to rate issues. Qwest's self-serving interpretation should be rejected.

In a perfect world, Qwest's dealings with CLECs would benefit both parties, and Commenters would applaud its efforts to equalize bargaining power. The relief sought by Qwest will not benefit the competitive process. The Qwest proposal is not in public interest and should not be adopted. Therefore, Commenters respectfully request that this Commission reject Qwest's request.

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PAC-WEST TELECOMM, INC. ON PETITION FOR DECLARATORY RULING OF QWEST COMMUNICATIONS INTERNATIONAL INC.

Focal Communications Corporation and Pac-West Telecomm, Inc. (collectively "Commenters"), by their undersigned attorneys, herein provide comments in opposition to the Petition for Declaratory Ruling ("Petition") filed by Qwest Communications International Inc. ("Qwest") in the above-captioned proceeding.

Commenters all will be directly affected by any changes to the regulatory review process for interconnection agreements, because all Commenters must obtain interconnection services from incumbent local exchange carriers ("ILECs") to provide telecommunications services.

Focal Communications Corporation ("Focal") is a competitive local exchange carrier ("CLEC") headquartered in Chicago, Illinois. Focal provides facilities-based local exchange service in selected markets in California, Florida, Georgia, Illinois, Massachusetts, Michigan, New York, Ohio, Pennsylvania, Texas, and Washington, D.C.

Pac-West Telecomm, Inc. ("Pac-West") is a CLEC headquartered in Stockton, California. Pac-West provides facilities-based local exchange service in selected markets in Arizona, California, Colorado, Nevada, and Washington.

I. QWEST'S STATUTORY INTERPRETATION SHOULD BE REJECTED

A. QWEST "INTERPRETATION" SEEKS A CHANGE IN THE LAW

Commenters strongly oppose Qwest's Petition. Qwest's Petition states that it seeks this Commission's guidance regarding the scope of its state filing obligations under Section 252(a)(1) of the Commission's Act ("the Act"). Section 252(a)(1) establishes a voluntary negotiation process whereby incumbent local exchange carriers ("ILECs") such as Qwest can reach negotiated interconnection agreements with other telecommunications carriers. Section 252(a)(1) states that "The agreement shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement." Section 252(a)(1) requires that the agreement be submitted to the State Commission under Section 252(e). That section requires that any interconnection agreement adopted by negotiation or arbitration be submitted for approval to the State Commission with approval or rejection during a 90-day time frame.

Qwest objects to the filing process set up in the law, and therefore seeks an "interpretation" of the law that would change the law. Although Qwest introduces its Petition by alleging that its Petition poses a "limited but important question"[1]—the effects of its suggestions, if adopted, would be extremely far-reaching. Its proposal is designed to give Qwest greater control and leverage in the "negotiation" process between ILECs and CLECs, and to limit the ability of CLECs to "opt in" to agreements. Thus, in fact the question posed by Qwest is not a limited question, but rather, a question of limitation.

[1] Petition at 1.

B. QWEST'S "INTERPRETATION" WOULD LIMIT THE ABILITY OF REGULATORS TO DETECT DISCRIMINATION

Qwest proposes a statutory interpretation that, if permitted, would limit the ability of regulators to quickly detect and remedy discriminatory ILEC conduct in the negotiation process. These changes would contribute to further devastation of the CLEC market.

Qwest focuses its request on Section 252(a)(1) of the Telecommunications Act of 1996 ("the Act"), and suggests a strained and inconsistent interpretation that would relieve Qwest and other ILECs from filing negotiated interconnection agreements, as the statute requires. Qwest's interpretation is strained because it focuses on one phrase in Section 251(a)(1) that requires ILECs to include a detailed schedule of charges in the interconnection agreements, and then it decides, to its own benefit, that the phrase should be read to mean that the term "interconnection agreement" does really mean the *entire* agreement. Qwest's suggested interpretation is inconsistent with the Act, because a major thrust of the Act was to require ILECs to reach interconnection agreements with other telecommunications carriers, and involve state and federal regulators in that process. Qwest seeks to limit the regulatory role in the process of interconnection negotiations, without the existence of satisfactory "marketplace" alternatives, as Commenters discuss more fully in Section II below.

C. THE LEGISLATIVE HISTORY OF THE ACT DOES NOT SUPPORT QWEST'S "INTERPRETATION"

As this Commission is aware, Sections 251 and 252 are core provisions of the Act. These sections set forth the general duty of ILECs to negotiate in good faith, to enter into interconnection agreements with telecommunications carriers requesting interconnection to provide local exchange and exchange access services, and to file the agreements with state regulators. Sections 251 and 252 set forth the procedures for negotiation, arbitration and approval of such agreements.

Congress, in adopting Section 252 after some of its own negotiations in the House-Senate Conference Committee, established that ILECs have a general duty to negotiate interconnection agreements, and provided several alternative methods for ILECs and CLECs to reach interconnection agreements. As Congress explains in the Joint Explanatory Statement of the Committee of Conference ("Conference Statement"), "any party may ask the State to participate during a voluntary negotiation period in the mediation of agreements. Agreements arrived at voluntarily do not need to meet the requirements of new section 251(b) and (c)."[2] Qwest mentions, but fails to discuss Section 252(a)(2), which provides that any party to a voluntary negotiation, at any point during the voluntary negotiation process, can ask the state commission to become involved and mediate any differences between the parties.[3] Perhaps Qwest does not dwell on this provision because it so directly contradicts its position. However, its failure to address this portion of the statute is troubling. It becomes clear from reviewing the Conference Statement that Congress intended to enact a statutory provision that creates a voluntary negotiation process for interconnection agreements that includes state regulators.

Qwest's proposal limits the opt-in process, reduces the role of states in reviewing agreements ignores both the plain meaning of the statute and its legislative history. Although Section 252(a)(1) does state, in part, that the "agreement shall include a detailed schedule of charges for interconnection and each service or network element included in the agreement" it certainly does not say that the detailed statement of charges is the only information that should be included in an interconnection agreement filed with the state commission. It can be argued that "detailed statement" of charges means that all terms and conditions (including non-price terms) are the details that should be included. Further, Section 252(e) plainly states that

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2 *See Conference Report on S. 652,* Pike & Fischer, *The Telecommunications Act of 1996: Law and Legislative History* at CR-125.

3 Petition at 14.

"interconnection agreements" shall be filed—not simply a statement of charges. This language implies that "agreement" has the plain meaning that it has in any other commercial contract—that all the terms governing the business relationship between the parties are included, not limited to price. All terms need to be included so that regulators can determine, if necessary, whether the agreement is non-discriminatory, and otherwise in compliance with the law and public interest.

The Act's Conference Statement explains that "the House recedes to the Senate with an amendment to provide that any party may ask the State to participate during a voluntary negotiation period in the mediation of agreements." This legislative history strongly supports the notion that Congress expected the state to have a role in the voluntary negotiation process, and that such process would result in an interconnection agreement, not just a schedule of charges.

Qwest appears to suggest, contrary to the language of the Conference Report, that Congress did not really mean to have state commission involvement in the voluntary negotiation process, and that Congress did not really mean entire interconnection agreements, but rather only that portion of the agreement that contains rates and charges. Qwest, in its recitation of the Act's legislative history, engages in its own version of "pick and choose."

For example, Qwest states that "in enacting Section 252 drawn primarily from the Senate bill, Congress essentially endorsed the view of the Senate Committee" and quotes from the Report of the Senate Committee on Commerce, Science and Transportation ("Report") where it stated that "The Committee intends to encourage private negotiation of interconnection agreements."[4] However, Qwest fails to include the next sentence—"At the same time, the Committee recognizes that minimum requirements for interconnection are necessary for opening local markets to competition," and the statement on the next page where the Committee

[4] Senate Report on S. 652 at SR-19.

emphasizes that negotiated interconnection agreements must be submitted to the state.[5] When Congress permitted negotiated agreements, it coupled the negotiation process with a clear requirement for state filing. Section 252(e) plainly states that "any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission." Qwest now is seeking an "interpretation" that changes the law.

In Section 252(e), Congress gives states the power to reject agreements (or any portion thereof) that discriminate against other telecommunications carriers not party to the agreement, or agreements that will be implemented in a way that is not consistent with the public interest.

Qwest seeks to undercut this important function in several ways. First, Qwest admits that it would prefer to reach agreements on an individualized basis.[6] Second, it tries to limit the state filing requirement to "important" provisions, arguing that only itemized charges and related services descriptions are relevant.[7] Third, it dismisses the state role in preventing potential discrimination, suggesting that such issues be addressed "after the fact."[8] As any casual reader of a daily newspaper knows, for many CLECs, "after the fact" is already too late.

D. COMMISION POLICY SUPPORTS THE STATE FILING REQUIREMENTS

This Commission's policy supports filing interconnection agreements with the states. In implementing the local competition provisions of the Act, the Commission concluded that the Act "does not exempt certain categories of agreements" from the state filing requirement.[9] Indeed, in requiring filing of pre-Act interconnection agreements with the state commissions, the Commission made clear that "Congress intended, in enacting sections 251 and 252, to create

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5 *Id.* at 20.
6 Petition at 5.
7 *Id.* at 6.
8 *Id.*
9 *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499 ("Local Competition Order") (1996) at para. 165.

opportunities for local telephone competition. We believe that this pro-competitive goal is best effected by subjecting all agreements to state commission review."[10] The Commission demonstrated that it understood how the requirement to file agreements and make them public created the procedural transparency necessary to assist telecommunications carriers seeking to opt-in to existing agreements, stating "First, requiring public filing of agreements enable carriers to have information about rates, terms, and conditions that an incumbent LEC makes available to others."[11] Commenters emphasize that the quoted statement confirms that this Commission expressly mentioned terms and conditions when it implemented the statute. In addition, the Commission acknowledged the important role of publicly filing agreements with the state to the "opt-in" process, stating "Second, any interconnection, service or network element provided under the agreement approved by the state commission under section 252 must be made available to other requesting telecommunications carrier upon the same terms and conditions, in accordance with section 252(i)."[12]

E. QWEST'S "INTERPRETATION" SEEKS RECONSIDERATION AND REVERAL OF ESTABLISHED POLICY

Therefore, Qwest's effort to carve out a new "interpretation" seeks untimely reconsideration and reversal of the policy decisions already made by this Commission. Qwest has not demonstrated any changed circumstances. Indeed, its factual showing is very spotty. It states that the issues presented in its Petition were "brought into focus for Qwest by recent events in Minnesota."[13] It appears from Qwest's recitation of these "events" that there is an ongoing proceeding at the Minnesota PUC, and it mentions, without elaboration, that AT&T has

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10 *Id.*
11 *Id.* at para. 167.
12 *Id.*
13 Petition at 20.

requested review of similar issues in other states.[14] Qwest also mentions, but gives no details (and does not even identify the states) that "preliminary" proceedings are taking place in other states.[15] It complains that there is a "risk" that different jurisdictions will reach divergent conclusions."[16] However, Qwest does not give this Commission very much information about the positions it has taken in these state proceedings, or where these proceedings stand procedurally. Qwest does not provide this Commission enough information for development of sufficient record to make any determination about Qwest's "risk" assessment. It only gives its vague assertions that it needs a ruling from this Commission to "eliminate the prospect of multiple, inconsistent rulings by a host of state commissions and federal courts."[17] It is clear from this statement that Qwest's concern is about the "prospect" and not any actual state rulings. Qwest's Petition thus presents only speculative fears about an undefined "host" of commissions and courts—not a sufficient basis to radically alter the long-established process for filing interconnection agreements previously examined in great detail by Congress and this Commission.

F. QWEST HAS NOT DEMONSTRATED SUFFICIENT BASIS TO LIMIT THE STATE'S ROLE

The Act assigns interdependent roles to both state and federal regulators. Qwest's Petition clearly challenges the role of the states in this process. There is no allegation that the states are not performing the tasks assigned by the Act, but rather, only an indefinite concern about how some states might ultimately interpret their respective roles, or perhaps more importantly, concerns about the enforceability of agreements Qwest chooses not to file. All these concerns, if they need to be addressed at all, are speculative and prospective, and this

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[14] *Id.*
[15] *Id.* at 21.
[16] *Id.*
[17] *Id.* at 5.

Commission should recognize the "ripeness" issue here. Qwest's has not pointed to any inconsistent state rulings, or even any rulings adverse to its position. It demonstrated an abstract concern about potential consequences that have not as yet, and may not ever materialize.

Although Commenters have not been involved in the state disputes between Qwest and AT&T, Commenters are concerned that Qwest is seeking to have this Commission issue a ruling that in effect would preempt the Minnesota Commission and other unnamed commissions even before their proceedings have concluded. It appears that Qwest's Petition asks the Commission to "clarify" the law as a collateral attack on both existence of the state proceedings, as well as any potential result.

As noted above, the Act establishes an interdependent relationship between state and federal regulators, and each have been assigned roles by Congress to take necessary actions to open the local telecommunications market to competition. This Petition seeks widespread changes to the established process, and the only factual information presented in the Petition by Qwest appears to relate to a single dispute with a large customer. This information undercuts its claims that it seeks changes to current procedures to address the "immediate needs" of CLECs "that an ILEC like Qwest will want to satisfy."[18]

G. QWEST'S "INTERPRETATION" WILL EVISCERATE THE "OPT-IN" PROCESS. CURRENT PROCEDURES SHOULD BE RETAINED

Although Qwest gives lip service to its customers by suggesting that it is seeking procedural changes to expedite service implementation, it does not mention any examples of its CLEC customers clamoring for the changes it suggests. Commenters question in Section III below the expression "normal business practices" (as Qwest uses the expression in its Petition) and submits that Qwest can meet its customers requirements with current procedures.

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[18] *Id.* at 7.

In addition to the voluntary negotiation process, Section 252 also includes procedures for carriers seeking interconnection services to obtain such services by purchasing services from a statement of generally available terms ("SGAT") filed with and approved by the state commission. A third alternative process, also conducted through the state commissions, is the more arduous and expensive process of arbitration.

Section 251(a)(1) created an alternative route to the time-consuming arbitration process for parties to reach interconnection agreements. This "voluntary" process has been used to reach agreements for services not available as SGATs, and to obtain agreement more quickly than is feasible for agreements reached through the arbitration process. However, the primary way carriers have been able to achieve interconnection agreements is through the "opt-in" process provided for in Section 252(i). This process will be eviscerated if Qwest can carve out all non-price provisions of its interconnection agreements before it files the agreements with the states.

Section 252(i) requires ILECs to make available any interconnection service or network element provided under an agreement approved under Section 252 to any other requesting carrier under the same terms and conditions. Therefore, when Qwest seeks to narrow both what type information needs to included in agreements, and limit what agreements need to be approved, it also is seeking to limit opt-in opportunities, despite its weak protestations to the contrary.

Qwest apparently still wants the flexibility to enter into and enforce agreements with other carriers. However, it apparently begrudges the state's role in the process, disparaging the state filing process as "micro-management"[19] and attempting to relegate their involvement to a "residual role."[20]

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[19] *Id.* at 15.
[20] *Id.* at 8 and 18.

Qwest also is dismissive of the "pick and choose" process which gives CLECs flexibility to assemble more reasonable interconnection agreements. Qwest's protestations on this point are quite circular—although they say that they are not "trying to reduce CLEC 'pick and choose' rights in any respect,"[21] they admit that since these rights apply only to agreements approved under Section 252 "this language only begs the question of which negotiated contract terms arising under Section 252(a) must be so approved."[22]

Qwest then suggests that, despite several years of Commission proceedings and court actions interpreting Section 252, that what really happened is that there was a "balance struck by Congress" (implying that it meant all along the interpretation now suggested by Qwest), that would answer the question begged by Qwest, and thereby change years of implementing actions by the federal and state regulators. Then Qwest audaciously proposes that Congress meant all along to limit "pick and choose" possibilities to rate issues, which after all, according to Qwest "are the most important "pick and choose" matters."[23] Qwest's self-serving interpretation should be rejected.

II. QWEST'S PROPOSAL WILL NOT PROMOTE IMPROVED BUSINESS DEALING BETWEEN ILECs AND CLECs

A. "NORMAL BUSINESS DEALING" SHOULD INCLUDE REGULATORY SAFEGUARDS

Qwest asserts that uncertainty regarding the Act's requirement that it file negotiated interconnection agreements "chills the normal ILEC-CLEC business processes."[24] It does not define what these "normal business processes," are, although its Petition is replete with

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[21] *Id.* at 16.

[22] *Id.* Note that Webster's II New College Dictionary (1995) offers the following in relation to the expression "beg the question"-To be released from (*e.g.* an obligation); to employ an argument that assumes as valid the very same argument one is trying to prove; or to dodge an issue.

[23] *Id.* at 17.

[24] *Id.* at 19.

references to "normal business dealings,"[25] "voluntary business relations"[26] and "normal business activity." All this discussion of "normal" apparently refers to a situation that would place Qwest outside the current statutory and regulatory processes (despite the fact that many businesses are subject to a wide variety of laws and regulations, such as compliance with antitrust and trade regulations, environmental, securities and consumer protection statutes).

What is considered "normal business dealing" in the telecommunications industry? In reviewing this matter, this Commission should be ever mindful of the continuing unequal bargaining power in the interconnection negotiation process between ILECs and CLECs. While CLECs are dependent upon dominant ILECs and *must* obtain interconnection agreements with ILECs to provide service, the ILECs can maintain their dominant position in the local exchange market and continue to offer services even if they *never* (on any time schedule) reach an interconnection agreement with a CLEC. As the Commission has long recognized the ILEC has scant, if any economic incentives to assist new entrants.[27] This Commission should be painfully familiar with telecommunications history prior to the Act. Of course, there exists quite a litigation and regulatory history, and many "war" stories, about telecommunications carriers seeking adequate, timely and cost-efficient interconnection from ILECs, even before the ILEC acronym was used in FCC pleadings. Many telecommunications carriers encountered refusals and long delays in the process of trying to reach agreements with ILECs. So in light of this difficult history, any telecommunications carrier seeking to obtain interconnection with an ILEC understandably is skeptical of the term "normal business dealing," and is especially concerned when presented with a new ILEC "interpretation" that will limit statutory protections (and will worry about being back to "business as usual").

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[25] *Id.* at 13.
[26] *Id.* at 5.
[27] Local Competition Order at para. 10 and para. 141.

B. BETTER ALTERNATIVES EXIST TO ADDRESS QWEST'S CONCERNS ABOUT TIMING

Qwest focuses its effort to change the statutory interpretation primarily on timing issues, suggesting that surely it should be able to dispense with statutory filing requirement because the state regulatory process might delay implementation of the agreement. Although this argument may have surface appeal, it does not hold up under closer scrutiny. Qwest, if it so chooses, can offer carriers greater timing flexibility by including more rates, terms and conditions on a generally available basis through the SGAT process. If such rates and terms have been previously reviewed, there are few timing issues. If it makes business sense to offer such terms, there should be no problem with making the terms generally available. Similarly, there should be no reason why Qwest should object to the adoption of previously arbitrated or negotiated agreements or provisions by other telecommunications carriers—if the provisions have been previously reviewed, the timing considerations that Qwest points to are not present. Indeed, a clear benefit of the "opt-in" and adoption process has been to cut the time required to reach an interconnection agreement.

C. QWEST'S PROPOSAL DOES NOT BENEFIT THE COMPETITIVE PROCESS

Certainly Qwest should be encouraged to have fair business dealings with its CLEC customers. However, nothing in this Petition will assure that Qwest meets its interconnection obligations in non-discriminatory ways. If Qwest succeeds in its efforts to be permitted to "individualize" service offerings, and limit significant aspects of interconnection agreements from regulatory scrutiny, Qwest will have the opportunity to discriminate between carriers requesting interconnection, to the ultimate detriment of CLECs, consumers and the goal of local telecommunications competition.

In a perfect world, Qwest's dealings with CLECs would benefit both parties, and Commenters would applaud its efforts to equalize bargaining power. The relief sought by Qwest would not benefit the competitive process. For example, Qwest requests that this Commission "clarify" that Section 252(a)(1) does not require it to publicly file with state commissions how it chooses to conduct its "business-to-business relationship" with CLECs.[28] Qwest seeks to limit regulatory scrutiny of escalation clauses, dispute resolution provisions, administrative arrangements including provisioning, billing and "other" activities, training and account team support and service quality or performance standards. Of course all these items are integral to determining whether an interconnection agreement is non-discriminatory. Qwest alleges that if it has to file such arrangements, for some undisclosed reason, it would be deterred from "crafting business relationships and arrangements to meet the unique needs of particular interconnecting carriers."[29] It is clear, from its brief discussion of its dispute in Minnesota, that Qwest would like to offer different levels of service (apparently for the same price) to carriers requesting interconnection. Interconnection disputes prior to the Act quite frequently focused on the efforts of ILECs to provide inferior access at superior prices, and the Act, in part, was a response to the frustration of carriers who could not obtain adequate interconnection from ILECs at reasonable prices.

D. QWEST'S PROPOSAL LIMITS THE ABILITY OF CUSTOMERS TO KNOW WHAT INTERCONNECTION FEATURES AND FUNCTIONS ARE AVAILABLE FOR PURCHASE

It is not entirely clear why Qwest does not believe it can meet the needs of its customers consistent with its obligations under the Act not to discriminate in its provision of interconnection services. Particularly troubling is Qwest's assertion that "the mere fact that a

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[28] *Id.* at 31.
[29] *Id.* at 32.

PUC does not review a contract term …[does not] prevent other CLECs from requesting similar arrangements."[30]

A hypothetical scenario may help illustrate Commenters concern about Qwest's version of "normal business dealings." Picture this "normal business" scenario: let's say that Qwest is a retail shopkeeper and it runs an "interconnection store." That store would contain a few items on the shelf available to all shoppers at the same price (these items would be the SGAT items). If a customer did not find what she was looking for, under Qwest's scenario, she could spend a long time haggling over and waiting for "special order" (through the arbitration process) or she could try to guess what the shopkeeper kept in his locked storeroom in the back. There would not be any list of items posted on the wall, or other public information that would permit a customer to know how the shopkeeper dealt with other customers. This Qwest store only would let in one customer at a time, and even if one customer guessed what hidden treasures were stored in the back room, there would be no guarantee that the shopkeeper would offer the next customer the same item, on the same terms.

Now in the store scenario, (presuming it is not some lonely wild West enterprise) the customer could migrate to another shop down the street that had more items on display, or to one that did not make the customer guess what was in the storeroom, or wait for the special order. However, because Qwest in its local exchange telephone business, previously was the exclusive provider of local services, it is the only interconnection store in town, indeed in the whole region, so it does not face the "normal" competitive pressures to provide a wide range of "off-the-shelf" items at competitive prices.

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[30] *Id.* at 5.

DI. GRANT OF THE QWEST PETITION IS NOT IN THE PUBLIC INTEREST

The Qwest proposal is not in public interest. It will limit competition in the industry, and should not be adopted. Commenters want to work with Qwest, this Commission and state regulators to make sure that the process works, and certainly are not adverse to realistic streamlining suggestions. However, here Qwest has proposed a very blunt instrument—cutting at the heart of the "opt-in" process, with no clear benefits apparent to improve competitive service offerings. Commenters are not persuaded that Qwest's "individually tailored" CLEC arrangements would give them the flexibility that now exists for CLECs who obtain interconnection information by reviewing publicly filed agreements, and then picking and choosing provisions applicable to their individual business needs. Qwest's petition suggests a step backward in the process of opening local markets to competition.

Therefore, Commenters respectfully request that this Commission reject Qwest's request. As discussed above, it is both untimely, not ripe for decision, and will not promote competition, and is not in the public interest.

Respectfully Submitted,

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Dated: May 29, 2002